

¹ 5 U.S.C. § 8101 *et seq.*

required recovery of the overpayment by deducting \$461.54 every 28 days from appellant's continuing compensation payments.

FACTUAL HISTORY

On November 6, 1999 appellant, then a 51-year-old rehabilitation clerk, filed an occupational disease claim (Form CA-2) alleging that she developed acute stress disorder/major depressive disorder due to factors of her federal employment. She stopped work on November 4, 1999. OWCP accepted the claim for depressive disorder. OWCP initially paid appellant wage-loss compensation on the supplemental rolls, and then paid her on the periodic rolls commencing August 7, 2005.

In a letter dated February 15, 2019, the employing establishment advised OWCP that appellant was enrolled in the Federal Employees Retirement System (FERS) and was entitled to receive SSA retirement benefits. It requested that OWCP contact SSA to determine whether appellant qualified for a FERS offset.

On March 14, 2019 OWCP requested information from SSA regarding appellant's possible FERS/SSA dual benefits.

On April 9, 2019 OWCP received a completed FERS/SSA dual benefits calculation form from SSA dated April 3, 2019, wherein SSA calculated appellant's SSA age-related retirement benefit rates with and without a FERS offset. The form indicated that appellant's SSA rates with FERS were: \$1,242.00 effective May 2014; \$1,263.10 effective December 2014 and December 2015; \$1,266.80 effective December 2016; \$1,291.10 effective December 2017; and \$1,328.20 effective December 2018. The form further indicated that appellant's SSA benefit rates without FERS were: \$437.70 effective May 2014; \$445.10 effective December 2014 and December 2015; \$446.40 effective December 2016; \$455.30 effective December 2017; and \$468.00 effective December 2018.

In a letter dated July 12, 2019, OWCP informed appellant that since she had been receiving SSA age-related retirement benefits since May 1, 2014, the portion of SSA benefits attributed to her federal service would be offset from her FECA wage-loss compensation. It advised her that as of June 23, 2019 her new FECA compensation payment every 28 days would be \$2,035.05.

OWCP completed a FERS offset calculation form on July 12, 2019. It determined the 28-day FERS offset amount for the days in each period and computed a total overpayment of \$51,113.31. This form indicated that: from May 1 through November 30, 2014 appellant received an overpayment of compensation in the amount of \$5,674.29; from December 1, 2014 through November 30, 2015 she received an overpayment of compensation in the amount of \$9,842.97; from December 1, 2015 through November 30, 2016 she received an overpayment of compensation in the amount of \$9,869.93; from December 1, 2016 through November 30, 2017 appellant received an overpayment of compensation in the amount of \$9,871.85; from December 1, 2017 through November 30, 2018 she received an overpayment of compensation in the amount of \$10,069.19; and from December 1, 2018 through June 22, 2019, appellant received an overpayment of compensation in the amount of \$5,785.08.

On July 12, 2019 OWCP notified appellant of its preliminary determination that she received an overpayment of compensation in the amount of \$51,113.31 as she had received FECA wage-loss compensation benefits for the period May 1, 2014 through June 22, 2019 that had not been reduced by the portion of her SSA age-related retirement benefits attributable to her federal service, and that this portion of her SSA benefit was a prohibited dual benefit. It further advised her of its preliminary determination that she was without fault in the creation of the overpayment. OWCP requested that appellant complete the enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documentation. Additionally, it provided her with an overpayment action request form and notified her that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing.

In an August 2, 2019 overpayment action request form, appellant requested a telephonic prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. She requested waiver of recovery of the overpayment noting that she had advised OWCP of her SSA benefits. In an accompanying completed Form OWCP-20, appellant advised that her monthly income included \$1,192.00 in SSA benefits and \$2,035.05 in FECA benefits, for a total monthly income of \$3,227.05. She reported total assets of \$4,091.59. Appellant indicated that she was looking for a place to rent as she had given up her last rental place to take care of her daughter in Georgia and that her last rent payment in 2018 was \$845.00. She provided her monthly expenses as \$100.00 to \$150.00 for food, \$100.00 for gas, \$48.76 for her cell phone, \$246.10 for her car payment, and \$114.38 for car insurance. Appellant noted monthly installment debts totaling approximately \$785.00. She submitted financial documentation verifying assets and monthly expenses.

A telephonic prerecoupment hearing was held on December 12, 2019. Appellant testified that she was now living with a friend and paying monthly rent of \$200.00 to that friend. She testified regarding monthly expenses including insurance, automobile payment, cell phone, credit card debt payments, and miscellaneous expenses.

By decision dated February 10, 2020, OWCP's hearing representative finalized OWCP's determination that appellant had received a \$51,113.13 overpayment of compensation for the period May 1, 2014 through June 22, 2019 because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without appropriate offset. He found that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment as her monthly income exceeded her monthly expenses by more than the allotted amount. The hearing representative required recovery of the overpayment by deducting \$461.54 every 28 days from appellant's continuing compensation payments.

On July 20, 2020 the Branch of Hearings and Review reopened the case on its own motion and vacated the February 10, 2020 decision, due to a technical error regarding the interest rate. This decision again finalized the preliminary overpayment determination of July 12, 2019, finding that the overpayment in the amount of \$51,113.13 would be recovered at the rate of \$464.54 from appellant's continuing compensation every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.² Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.³

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related retirement benefits that are attributable to federal service of the employee.⁴ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁵

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received a \$51,113.13 overpayment of compensation for the period May 1, 2014 through June 22, 2019 because she concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

OWCP paid appellant wage-loss compensation on the periodic rolls beginning August 7, 2005. Effective May 1, 2014, appellant received SSA age-related retirement benefits. As noted, a claimant cannot receive compensation for wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁶ The information provided by SSA indicated that a portion of appellant's SSA age-related retirement benefits were attributable to her federal service. As OWCP neglected to offset her FECA benefits for the period May 1, 2014 through June 22, 2019, she received an overpayment of wage-loss compensation.⁷

Based on the rates provided by SSA, OWCP calculated the overpayment of compensation by determining the portion of SSA benefits that were attributable to appellant's federal service. SSA provided her SSA rate with FERS and without FERS beginning May 1, 2014. OWCP provided its calculations of the amount that it should have offset for each relevant period based on the SSA worksheet. The Board has reviewed OWCP's calculations and finds that it properly

² *Id.* at § 8102(a).

³ *Id.* at § 8116.

⁴ 20 C.F.R. § 10.421(d); *see W.T.*, Docket No. 20-1218 (issued February 26, 2021); *L.W.*, Docket No. 19-0787 (issued October 23, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁵ FECA Bulletin No. 97-09 (issued February 3, 1997); *see also M.G.*, Docket No. 20-1145 (issued February 24, 2021); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

⁶ *Id.*; *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

⁷ *Id.*

determined that appellant received prohibited dual benefits totaling \$51,113.13, creating an overpayment of compensation in that amount.⁸

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.⁹ Section 10.438 of OWCP's regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁰

The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of OWCP's regulations.¹¹ Section 10.436 provides that recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her income (including compensation benefits) to meet current ordinary and necessary living expense, and, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹² For waiver of recovery of the overpayment under the defeat the purpose of FECA standard, appellant must show that he or she needs substantially all of his or her current income to meet current ordinary and necessary living expenses, and that assets do not exceed the resource base.¹³ An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹⁴

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

⁸ *M.G.*, *supra* note 5; A.S., Docket No. 19-0171 (issued June 12, 2019).

⁹ *Supra* note 1 at § 8129.

¹⁰ 20 C.F.R. § 10.438.

¹¹ *Id.* at §§ 10.434-10.437.

¹² *Id.* at § 10.436. OWCP's procedures provide that a claimant is deemed to need substantially all of his or her current net income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00. Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Determinations*, Chapter 6.400.4a(3) (September 2018). OWCP's procedures further provide that assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent, plus \$1,200.00 for each additional dependent. *Id.* at Chapter 6.400.4a(2).

¹³ *Id.*

¹⁴ *Id.*

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁵

Appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not shown that she needs substantially all of her current income to meet ordinary and necessary living expenses.

The Board finds that the documentation of record supports that appellant had \$3,397.00 in monthly income and \$981.00 in monthly expenses, and thereby her monthly income exceeded her monthly ordinary and necessary expenses by more than \$50.00.¹⁶ OWCP properly arrived at these by figures carefully reviewing the documentation and determining what claimed expenses were supported by the record.¹⁷

The Board further finds that appellant has not established that recovery of the overpayment would defeat the purpose of FECA because she has not shown both that she needs substantially all of her current income to meet ordinary and necessary living expenses and that her assets do not exceed the allowable resource base. As noted above, appellant's monthly income exceeds her monthly ordinary and necessary expenses by more than \$50.00. As her current income exceeds her current ordinary and living expenses by more than \$50.00, she has not shown that she needs substantially all of her current income to meet current ordinary and necessary living expenses.¹⁸ Because appellant has not met the first prong of the two-prong test of whether recovery of the overpayment would defeat the purpose of FECA, it is not necessary for OWCP to consider the second prong of the test, *i.e.*, whether her assets do not exceed the allowable resource base.

Appellant also has not established that recovery of the overpayment would be against equity and good conscience because she has not shown, for the reasons noted above, that she would experience severe financial hardship in attempting to repay the debt or that she relinquished a valuable right or changed her position for the worse in reliance on the payment which created the overpayment.¹⁹

Because appellant has not established that recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience, the Board finds that OWCP properly denied waiver of recovery of the overpayment.

¹⁵ See *J.R.*, Docket No. 17-0181 (issued August 12, 2020); *L.S.*, 59 ECAB 350 (2008).

¹⁶ *Id.*

¹⁷ See *W.T.*, *supra* note 4; *J.B.*, Docket No. 16-0796 (issued August 19, 2016).

¹⁸ *Supra* note 15.

¹⁹ See *W.T.*, *supra* note 4; *J.B.*, *supra* note 17; *William J. Murphy*, 41 ECAB 569 (1989).

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.²⁰

Section 10.441 of OWCP's regulations provides that, when an overpayment of compensation has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to the same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors so as to minimize hardship.²¹

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deduction of \$461.54 from appellant's continuing compensation every 28 days.

The record supports that, in requiring repayment of the \$51,113.13 overpayment of compensation by deducting \$461.54 from appellant's compensation payments every 28 days, OWCP took into consideration the financial information submitted by her as well as the factors set forth in 20 C.F.R. § 10.441 and found that this method of recovery would minimize hardship on appellant. Therefore, OWCP properly required recovery of the overpayment by deducting \$461.54 from her compensation payments every 28 days.

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$51,113.13 for the period May 1, 2014 through June 22, 2019, for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation benefits without appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$461.54 from her continuing compensation payments every 28 days.

²⁰ *Supra* note 10 at § 10.441; *see W.T.*, *supra* note 4; *M.P.*, Docket No. 18-0902 (issued October 16, 2018).

²¹ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the July 20, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 14, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board